

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2079

Introduced by Assembly Member Grove

February 20, 2014

An act to amend Section ~~2699~~ 2699.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2079, as amended, Grove. ~~Employment—Labor Code Private Attorneys General Act of 2004.~~

Under existing law, the Labor Code Private Attorneys General Act of 2004, any provision providing for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of certain provisions affecting employees, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to specified procedures. The act provides that for certain provisions of law the employer has the right to cure a violation before a civil action may be brought, as specified. For provisions of law that this right to cure does not apply, the aggrieved employee must follow other specified procedures before an action may be brought.

Existing law requires an employer to provide its employees with specified information regarding their wages either semimonthly or at the time of each wage payment. This law is one of a set of provisions a violation of which the employer does not have the right to cure before a violation may be brought under the Labor Code Private Attorneys General Act of 2004.

This bill would allow an employer to cure a violation of the wage statement law described above before an action may be brought under the Labor Code Private Attorneys General Act of 2004. The bill would also delete obsolete provisions of law.

~~The Labor Code Private Attorneys General Act of 2004 provides that a civil penalty for a violation of the Labor Code may be recovered through a civil action brought by an aggrieved employee, as specified.~~

~~This bill would make nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2699.5 of the Labor Code is amended to
2 read:
3 2699.5. The provisions of subdivision (a) of Section 2699.3
4 apply to any alleged violation of the following provisions:
5 subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5,
6 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,
7 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section
8 213, Sections 221, 222, 222.5, 223, and 224, ~~subdivision (a) of~~
9 ~~Section 226~~, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3,
10 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
11 subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and
12 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7,
13 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750,
14 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976,
15 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153,
16 subdivisions (c) and (d) of Section 1174, Sections 1194, 1197,
17 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3,
18 Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1,
19 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309,
20 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision
21 (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8,
22 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31,
23 1700.32, 1700.40, and 1700.47, ~~paragraphs (1), (2), and (3) of~~
24 ~~subdivision (a) of, and subdivision (c) of, Section 1701.4,~~
25 ~~subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10,~~
26 ~~1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and~~
27 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800,

1 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and
2 Sections 3095, 6310, 6311, and 6399.7.

3 ~~SECTION 1. Section 2699 of the Labor Code is amended to~~
4 ~~read:~~

5 ~~2699. (a) Notwithstanding any other law, any provision of this~~
6 ~~code that provides for a civil penalty to be assessed and collected~~
7 ~~by the Labor and Workforce Development Agency or any of its~~
8 ~~departments, divisions, commissions, boards, agencies, or~~
9 ~~employees, for a violation of this code, may, as an alternative, be~~
10 ~~recovered through a civil action brought by an aggrieved employee~~
11 ~~on behalf of himself or herself and other current or former~~
12 ~~employees pursuant to the procedures specified in Section 2699.3.~~

13 ~~(b) For purposes of this part, "person" has the same meaning~~
14 ~~as defined in Section 18.~~

15 ~~(c) For purposes of this part, "aggrieved employee" means any~~
16 ~~person who was employed by the alleged violator and against~~
17 ~~whom one or more of the alleged violations was committed.~~

18 ~~(d) For purposes of this part, "cure" means that the employer~~
19 ~~abates each violation alleged by any aggrieved employee, the~~
20 ~~employer is in compliance with the underlying statutes as specified~~
21 ~~in the notice required by this part, and any aggrieved employee is~~
22 ~~made whole.~~

23 ~~(e) (1) For purposes of this part, whenever the Labor and~~
24 ~~Workforce Development Agency, or any of its departments,~~
25 ~~divisions, commissions, boards, agencies, or employees, has~~
26 ~~discretion to assess a civil penalty, a court is authorized to exercise~~
27 ~~the same discretion, subject to the same limitations and conditions,~~
28 ~~to assess a civil penalty.~~

29 ~~(2) In any action by an aggrieved employee seeking recovery~~
30 ~~of a civil penalty available under subdivision (a) or (f), a court~~
31 ~~may award a lesser amount than the maximum civil penalty amount~~
32 ~~specified by this part if, based on the facts and circumstances of~~
33 ~~the particular case, to do otherwise would result in an award that~~
34 ~~is unjust, arbitrary and oppressive, or confiscatory.~~

35 ~~(f) For all provisions of this code except those for which a civil~~
36 ~~penalty is specifically provided, there is established a civil penalty~~
37 ~~for a violation of these provisions, as follows:~~

38 ~~(1) If, at the time of the alleged violation, the person does not~~
39 ~~employ one or more employees, the civil penalty is five hundred~~
40 ~~dollars (\$500).~~

~~(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.~~

~~(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.~~

~~(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.~~

~~(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.~~

~~(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of this code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.~~

~~(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code; to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.~~

1 ~~(j) Civil penalties recovered under paragraph (1) of subdivision~~
2 ~~(f) shall be distributed to the Labor and Workforce Development~~
3 ~~Agency for enforcement of labor laws and education of employers~~
4 ~~and employees about their rights and responsibilities under this~~
5 ~~code, to be continuously appropriated to supplement and not~~
6 ~~supplant the funding to the agency for those purposes.~~

7 ~~(k) Nothing contained in this part is intended to alter or~~
8 ~~otherwise affect the exclusive remedy provided by the workers'~~
9 ~~compensation provisions of this code for liability against an~~
10 ~~employer for the compensation for any injury to or death of an~~
11 ~~employee arising out of and in the course of employment.~~

12 ~~(l) The superior court shall review and approve any penalties~~
13 ~~sought as part of a proposed settlement agreement pursuant to this~~
14 ~~part.~~

15 ~~(m) This section shall not apply to the recovery of administrative~~
16 ~~and civil penalties in connection with the workers' compensation~~
17 ~~law as contained in Division 1 (commencing with Section 50) and~~
18 ~~Division 4 (commencing with Section 3200), including, but not~~
19 ~~limited to, Sections 129.5 and 132a.~~

20 ~~(n) The agency or any of its departments, divisions,~~
21 ~~commissions, boards, or agencies may promulgate regulations to~~
22 ~~implement the provisions of this part.~~